



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2017-0101, FRL-9968-91-Region 2]

Approval and Promulgation of Implementation Plans;

New Jersey; Motor Vehicle Enhanced Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the State Implementation Plan (SIP) submitted by the New Jersey Department of Environmental Protection for New Jersey's enhanced inspection and maintenance (I/M) program. New Jersey has made several amendments to its I/M program to improve performance of the program and has requested that the SIP be revised to include these changes. Chief among the amendments the EPA is proposing to approve is New Jersey's amendment to its I/M program to discontinue two-speed idle tests on model year 1981-1995 light duty gasoline vehicles, idle tests on pre-1981 model year light duty gasoline vehicles, idle tests on heavy duty gasoline vehicles and gas cap leak testing. In addition, heavy duty gasoline vehicles equipped with on-board diagnostics (OBD) will be subject to OBD testing with this revision. The EPA is proposing approval of this SIP revision because it meets all applicable requirements of the Clean Air Act and the EPA's regulations and because the revision will not interfere with attainment or maintenance of the national ambient air quality standards in the affected area. The intended effect of this action is to maintain consistency between the State-adopted rules and the federally approved SIP.

DATES: Comments must be received on or before [**Insert date 30 days from date of publication in the Federal Register**].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R02-OAR-2017-0101, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION, CONTACT;

Reema Loutan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3760, or by email at Loutan.Reema@epa.gov

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I. What Action is the EPA Proposing?

The EPA is proposing to approve a revision, submitted by New Jersey on September 16, 2016, to the New Jersey State Implementation Plan (SIP) pertaining to New Jersey's motor vehicle enhanced inspection and maintenance (I/M) program. New Jersey provided the EPA with documentation on the emission impacts that will result from changes to New Jersey's enhanced I/M program including a comparison to the EPA I/M performance standard. The revisions submitted by New Jersey include discontinuing the two-speed idle tests on model year 1981-1995 light duty gasoline vehicles, idle tests on pre-1981 model year light duty gasoline vehicles, idle tests on heavy duty gasoline vehicles and gas cap leak testing; requiring OBD testing for heavy duty gasoline vehicles equipped with on-board diagnostics (OBD); requiring inspections for commercial vehicles; and requiring that re-inspections of all vehicles be performed at New Jersey's decentralized I/M facilities.

II. Background Information

What are the Clean Air Act requirements for a Moderate 8-hr Ozone Nonattainment Area?

History of the ozone standard and area designations

In 1997, the EPA revised the health-based National Ambient Air Quality Standards (NAAQS) for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour period. The EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. The EPA determined that the 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23857), the EPA finalized its attainment/nonattainment designations for areas across the country, including the State of New Jersey, with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. Then on March 27, 2008 (73 FR 16436), the EPA revised the level of the 8-hour primary, health-based standard to a level of 0.075 parts per million (ppm), to provide increased protection for children and other “at risk” populations against an array of ozone-related adverse health effects such as decreased lung function and increased respiratory symptoms.

The New Jersey portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area is composed of the following counties: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, and Warren. The New Jersey

portion of the Philadelphia-Wilmington, Atlantic City, PA-DE-MD-NJ nonattainment area is composed of the following counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean and Salem. All of these counties in both areas were classified as moderate or above ozone nonattainment areas under the previous 1-hour ozone standard. These designations triggered the requirements under section 182(b) of the Clean Air Act (CAA) for moderate and above nonattainment areas, including a requirement to submit an enhanced motor vehicle I/M program.

CAA section 181(b)(2) requires the EPA Administrator to determine, based on an area's design value (which represents air quality in the area for the most recent 3-year period) as of an area's attainment deadline, whether an ozone nonattainment area attained the ozone standard by that date. The statute provides a mechanism by which states that meet certain criteria may request and be granted by the EPA Administrator a 1-year extension of an area's attainment deadline. The CAA also requires that areas that have not attained the standard by their attainment deadlines be reclassified to either the next "highest" classification (*e.g.*, marginal to moderate, moderate to serious, etc.) or to the classifications applicable to the areas' design value.

Under the original designations for the 2008 ozone NAAQS in July 2012, New Jersey was classified as marginal. However, New Jersey failed to attain the 2008 ozone NAAQS by the applicable marginal attainment deadline of July 20, 2015. Therefore, on May 4, 2016 (81 FR 26697), the New York-Northern New Jersey-Long Island, NY-NJ-CT was reclassified from marginal to moderate for the 2008 ozone NAAQS, with a new 2008 ozone NAAQS attainment

date of July 20, 2018. In that same action, the EPA determined that the Philadelphia Area and Southern New Jersey qualified for a 1-year extension of its attainment date, as provided in section 181(a)(5) of the CAA and interpreted by regulation at 40 CFR 51.1107, and granted the requested extension. The EPA established the new attainment date for the Philadelphia Area as July 20, 2016, to be based on ambient air quality monitoring data for the 2013–2015 monitoring period.

Demonstrating Noninterference with Attainment and Maintenance Under CAA Section 110(l)

Revisions to SIP-approved control measures must meet the requirements of CAA section 110(l) to be approved by the EPA. Section 110(l) states:

The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.

The EPA interprets section 110(l) to apply to all requirements of the CAA and to all areas of the country, whether attainment, nonattainment, unclassifiable, or maintenance, for one or more of the six criteria pollutants. The EPA also interprets section 110(l) to require a demonstration addressing all pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision. In the absence of an attainment demonstration, to demonstrate no interference with any applicable NAAQS or requirement of the CAA under section 110(l), the EPA believes it is appropriate to allow states to substitute equivalent emissions reductions to compensate for any change to a SIP approved program, as long as actual emissions in the air are not increased. “Equivalent” emissions reductions mean reductions which are equal to or greater

than those reductions achieved by the control measure approved in the active portion of the SIP. In order to show that compensating emissions reductions are equivalent, modeling or adequate justification must be provided. The compensating, equivalent reductions must represent actual, new emissions reductions achieved in a contemporaneous time frame to the change of the existing SIP control measure, in order to preserve the status quo level of emission in the air. In addition to being contemporaneous, the equivalent emissions reductions must also be permanent, enforceable, quantifiable, and surplus to be approved into the SIP. See Section V for information on the state's 110(l) demonstration and I/M program benefits.

Clean Air Act Requirements for I/M Programs

The CAA requires certain states to implement an enhanced I/M program to detect gasoline-fueled motor vehicles that exhibit excessive emissions of certain air pollutants. The enhanced I/M program is intended to help states meet federal health-based NAAQS for ozone and carbon monoxide by requiring vehicles with excess emissions to have their emissions control systems repaired. Section 182 of the CAA requires I/M programs in those areas of the nation that are most impacted by carbon monoxide and ozone pollution.

On April 5, 2001, the EPA published in the Federal Register "Amendments to Vehicle Inspection and Maintenance Program Requirements Incorporating the On-Board Diagnostics Check" (66 FR 18156). The revised I/M rule requires that electronic checks of the On-Board Diagnostics (OBD) system on model year 1996 and newer OBD-equipped motor vehicles be conducted as part of states' motor vehicle I/M programs. OBD is part of the sophisticated vehicle powertrain

management system and is designed to detect engine and transmission problems that might cause vehicle emissions to exceed allowable limits.

The OBD system monitors the status of up to 11 emission control related subsystems by performing either continuous or periodic functional tests of specific components and vehicle conditions. The first three testing categories – misfire, fuel trim, and comprehensive components – are continuous, while the remaining eight only run after a certain set of conditions has been met. The algorithms for running these eight periodic monitors are unique to each manufacturer and involve such things as ambient temperature as well as driving conditions. Most vehicles will have at least five of the eight remaining monitors (catalyst, evaporative system, oxygen sensor, heated oxygen sensor, and exhaust gas recirculation or EGR system) while the remaining three (air conditioning, secondary air, and heated catalyst) are not necessarily applicable to all vehicles. When a vehicle is scanned at an OBD-I/M test site, these monitors can appear as either “ready” (meaning the monitor in question has been evaluated), “not ready” (meaning the monitor has not yet been evaluated), or “not applicable” (meaning the vehicle is not equipped with the component monitor in question).

The OBD system is also designed to fully evaluate the vehicle emissions control system. If the OBD system detects a problem that may cause vehicle emissions to exceed 1.5 times the Federal Test Procedure standards, then the Malfunction Indicator Light (MIL) or Check Engine Light, is illuminated. By turning on the MIL, the OBD system notifies the vehicle operator that an

emission-related fault has been detected, and the vehicle should be repaired as soon as possible, thus reducing the harmful emissions contributed by that vehicle.

The EPA's revised OBD I/M rule applies to only those areas that are required to implement I/M programs under the CAA, which includes the aforementioned counties in New Jersey. This rule established a deadline of January 1, 2002 for states to begin performing OBD checks on 1996 and newer model OBD-equipped vehicles and to require repairs to be performed on those vehicles with malfunctions identified by the OBD check.

New Jersey is required to have an enhanced I/M program pursuant to the CAA, and consequently has adopted, and has been implementing an enhanced I/M program statewide since December 13, 1999. On January 22, 2002, (67 FR 2811), the EPA fully approved New Jersey's enhanced I/M program and the State's performance standard modeling as meeting the applicable requirements of the CAA. Additional information on the EPA's final approval of New Jersey's enhanced I/M program can be found in the EPA's January 22, 2002, final approval notice.

III. What was included in New Jersey's SIP submittal?

On September 16, 2016, New Jersey submitted a revision to the State of New Jersey's I/M program SIP. The submittal consists of new rules and rule amendments to the New Jersey Department of Environmental Protection's rules at N.J.A.C. 7:27-14, 7:27-15, 7:27A-3, 7:27B-4, 7:27B-5 and the Motor Vehicle Commission rules at N.J.A.C. 13:20-7.1 through 7.6, 13:20-26.12 and 26.16, 13:20-32.1 through 32.49, 13:20-33.1 through 33.50, Appendix C, N.J.A.C.

13:20-43.1, 43.2 and 43.2A, 43.4 through 43.8, 43.14, 43.16, and N.J.A.C 13:20-44.2, 44.3 and 44.10.

The changes to New Jersey's I/M program include the elimination of exhaust emission tests or tailpipe testing for all gasoline motor vehicles. OBD testing will be required for all vehicles, including heavy duty gasoline vehicles, subject to inspection and required by the EPA to be equipped with an OBD system. The two-speed idle tests on model year 1981-1995 light duty gasoline vehicles, idle tests on pre-1981 model year light duty gasoline vehicles and idle tests on heavy duty gasoline vehicles will be discontinued.

The changes to New Jersey's I/M program also include procedures for diesel exhaust after-treatment checks, standards for fuel leak checks and replacement of the fuel cap leak test for gasoline-fueled vehicles with a visual gas cap check to ensure that the gas cap is present. NJ also submitted amendments to rules related to inspection requirements and inspection procedures. For heavy-duty diesel powered vehicles, New Jersey is repealing the rolling acceleration smoke opacity test, and the power brake smoke opacity test, and retaining only the snap acceleration smoke opacity test.

Enforcement related amendments include authorizing inspectors of both gasoline-fueled and diesel-powered motor vehicles to fail a vehicle if it is determined that there has been tampering with the vehicle's emission controls. The New Jersey Department of Environmental Protection may also impose penalties for tampering with emission controls on diesel vehicles. The New

Jersey Diesel Emission Inspection Center inspection forms will be replaced with daily electronic reporting of diesel inspections, and private inspection facilities will submit diesel inspection information through an electronic portal or workstation.

New Jersey provided documentation on the emission impacts that will result from proposed changes to New Jersey's I/M program, including a comparison to the EPA I/M performance standard.

IV. What Are the I/M Performance Standard Requirements and Does New Jersey's I/M Program Satisfy Them?

As part of its final rule for I/M requirements, the EPA established a "model" program for areas that were required to implement enhanced I/M programs. This model program is termed by the EPA as the "I/M performance standard" and is defined by a specific set of program elements. The purpose of the performance standard is to provide a gauge by which the EPA can evaluate the adequacy and effectiveness of each state's enhanced I/M program. As such, states are required to demonstrate that their enhanced I/M programs achieve applicable area-wide emission levels for the pollutants of interest that are equal to, or lower than, those which would be realized by the implementation of the model program.

Originally, the EPA only designed one enhanced performance standard, as specified at 40 CFR 51.351, and required all enhanced I/M program areas to meet or exceed that standard. However, on September 18, 1995, the EPA promulgated the "low" enhanced performance standard. The

low enhanced performance standard is a less stringent enhanced I/M performance standard established for those areas that have an approved SIP for Rate of Progress (ROP) for 1996, and do not have a disapproved plan for ROP for the period after 1996 or a disapproved plan for attainment of the air quality standards for ozone or carbon monoxide. New Jersey is currently demonstrating compliance with the CAA requirements for ROP and attainment and can therefore use the “low” enhanced performance standard. The revised performance standard modeling included as part of New Jersey’s submittal is designed to show attainment of the low enhanced performance standard.

In accordance with the EPA’s final rule for I/M requirements (40 CFR Part 51, Subpart S), a state must design and implement its enhanced I/M program such that it meets or exceeds a minimum performance standard. The performance standard is expressed as average grams per mile (gpm) or tons per day emission levels from area-wide highway mobile sources as a result of the enhanced I/M program. Areas must meet the performance standard for the pollutants that cause them to be subject to the enhanced I/M requirements. New Jersey was required to implement its enhanced I/M program because of its non-attainment status for two criteria air pollutants, ozone (of which volatile organic compounds (VOCs) and oxides of nitrogen (NO_x) are precursors) and carbon monoxide.

The EPA’s final rule on I/M requirements also requires that the equivalency of the emission levels achieved by the state’s enhanced I/M program design compared to those of the performance standard must be demonstrated using the most current version of the EPA’s mobile source emission model. The model New Jersey utilized in its analysis was MOVES2014, which

was the most current version of the EPA's mobile source emission model at the time the SIP revisions were submitted.

Table 1 below compares the Low Enhanced I/M Performance Standards with New Jersey's existing and proposed enhanced I/M programs.

Table 1: Performance Standard and New Jersey's Enhanced Program Designs

Program Element	Low Enhanced Performance Standard	New Jersey's Existing Enhanced I/M Program	New Jersey's New Enhanced I/M Program
Network Type	100% centralized	hybrid – 70% centralized/30% decentralized	hybrid - 70% centralized/30% decentralized
Program Start Date	1983	1974	1974
Regulatory Class Coverage for Source types: 21, 31 and 32 ¹	100% 94% 88%	100%	100% 97.0% 94.0%
Overall I/M Program Effectiveness for Source types: 21, 31 and 32 ²	93.12% 87.53% 81.95%	96%	96.00% 93.12% 90.24%
Test Frequency	Annual	Biennial	Biennial
New Vehicle Exemption	None	5 Years	5 Years
Model Year (MY) Coverage	1968 and later MY	all vehicles not specifically exempt	1996 and later MY
Vehicle Type Coverage	All light-duty gasoline-fueled vehicles and trucks (up to 8,500 lbs. GVWR)	All gasoline-fueled vehicles and trucks (both light and heavy duty vehicles)	All gasoline-fueled vehicles and trucks except non-OBD equipped vehicles greater than 8,500 lbs. GVWR
Exhaust Emission Test	<u>Idle</u> - 1968-2050 MY	<u>OBD</u> - 1996 and later MY beginning 6/1/03 <u>Two-Speed Idle</u> – 1981-1995 MY <u>Idle</u> - pre-1981 and HDGVs	<u>OBD</u> - 1996 and later MY
Evaporative System Function Checks	N/A	<u>Gas Cap Testing</u> – 1971 – 2000 MY inclusive (beginning calendar year 1998)	None

¹ Source Types included are: 21 – passenger vehicles; 31 – passenger trucks; 32 – light commercial trucks

² Overall I/M Program effectiveness is calculated as follows: Compliance Factor = percent compliance rate X (100 – percent waiver rate) X regulatory class coverage adjustment.

Waiver Rate	3%	0%	0%
Compliance Rate	96%	96%	96%
Evaluation Date	July 2018	July 2018	July 2018

I/M programs are designed and implemented to meet or exceed an applicable minimum federal performance standard. To determine whether a state's proposed program is projected to meet or exceed the relevant performance standard specified in 40 CFR 51.351, the state performed three modeling scenarios³: a no-I/M case, the proposed program, and the applicable I/M performance standard. More conventionally, performance standards are expressed as emission reductions, as compared to a no I/M scenario. The performance standard emission results will vary for each state due to the use of state-specific inputs such as registration distribution and fuel types. I/M jurisdictions are allowed to adopt alternate design features other than the EPA's "model" inputs and must show compliance with the applicable performance standard for the pollutant(s) that established I/M requirements.

In order to complete its performance standard and program evaluation modeling, New Jersey used the parameters and assumptions shown previously in Table 1, as well as the assumption and values in Table 2.

³ Information on the three modeling scenarios can be found at Performance Standard Modeling for New and Existing Vehicle Inspection and Maintenance (I/M) Programs Using the MOVES Mobile Source Emissions Model, EPA-420-B-14-006, January 2014

Table 2: Modeling Assumptions

Modeling Parameters	Value Used for Average Summer Runs (VOC and NO_x)
Maximum Temperature (F)	83.4
Minimum Temperature (F)	63.8
Relative Humidity range (%)	50 – 86.8
Activity Inputs (VMT, Speed Age Distributions, Vehicle Populations, etc.)	New Jersey USEPA EIS MOVES Inputs for 2018
Early NLEV and NJ Low Emission Vehicle Program without ZEV Mandate	Yes
Fuel Specifications	MOVES Defaults

Table 3 shows the emissions reduction results from modeling the New Jersey I/M program compared to the EPA low enhanced performance standard. The emissions reductions achieved under New Jersey’s new proposed I/M program meet or exceed those achieved under the performance standards.

Table 3: Low Enhanced Performance Standard Modeling Results

Program Type	VOC+NO_x (tons/day)	Carbon Monoxide (tons/day)
USEPA Low Enhanced Performance Standard (2002)	160.3	853.1
New Jersey, No I/M Program (2018)	163.7	935.6
New Jersey Proposed I/M Program (2018)	153.4	829.1

New Jersey has demonstrated that the changes to their enhanced I/M program will meet the performance standard requirements and will therefore continue to achieve emission reductions necessary to attain and maintain the NAAQS for all criteria pollutants. Specifically, New Jersey’s modeling of the proposed I/M program resulted in emission reductions of 153.4 tons per

day VOC and NO_x, and 829.1 tons/day CO which exceeds EPA's performance standards of 160.3 tons/day VOC and NO_x and 853.1 tons/day CO.

EPA's Evaluation

The EPA has reviewed New Jersey's changes to its enhanced I/M program that differ from the previous Federally approved program and has determined that those changes meet relevant performance standards and are therefore approvable into the SIP. The EPA will continue to evaluate New Jersey's enhanced I/M program effectiveness through the annual and biennial reports submitted by New Jersey in accordance with 40 CFR 51.366, "Data Analysis and Reporting."

V. What are New Jersey's I/M Program Benefits?

For SIP revisions that will or could potentially lead to a change in emissions or ambient concentrations of a pollutant or its precursors, the section 110(l) demonstration should address all pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision. As indicated in Table 4, the I/M Program Benefits modeling performed by New Jersey and verified by the EPA shows an emissions reduction benefit shortfall of 2 tons per day between New Jersey's existing and new enhanced I/M programs for ozone precursors (VOCs and NO_x), and 11.4 tons per day for carbon monoxide. Shortfall is a term of art that means there are lower projected benefits than what is currently in place. New Jersey needs to "make up" for this decrease in projected emission reductions resulting from the changes being made to the I/M program through the application of programs not already included in the 8-hour ozone SIP. The decrease in projected emission reductions from the changes in the I/M program is calculated by

running the MOVES2014 model for both the existing and proposed new I/M programs for the evaluation year of 2018. New Jersey addresses the emissions benefit shortfall by using a portion of the emission benefits from the New Jersey Low Emission Vehicle Program (NJLEV). The emission benefits from the NJLEV program are quantified by additional MOVES2014 modeling that include scenarios with and without NJLEV inputs. The difference in emissions between these MOVES2014 scenarios represents the estimates of the NJLEV emission benefits. The emission reduction benefits from the NJLEV program are considered contemporaneous because a new phase of the NJLEV rules began in 2015 to incorporate more stringent evaporative and emissions standards. New vehicles sold in New Jersey are meeting these more stringent NJLEV rules ahead of EPA Tier 3 standards which are equivalent to NJLEV. Additional control measures and strategies that New Jersey is relying on to further improve air quality are:

- Control of Petroleum Storage Tanks (N.J.A.C 7:27-16.2)
- Electric Generating Rule (N.J.A.C 7:27-4.2, 10.2, 19.4)
- Portable fuel Containers (N.J.A.C 7:27-24)
- Voluntary Retrofits of Ferries (DERA/CMAQ Grants)
- Phase 2 HEDD Rule for Electric Generating Units (N.J.A.C 7:27-19.29)
- Continuation of the I/M Program for Diesel Vehicles (N.J.A.C 7:27-14)

A summary of the I/M Program benefits modeling results is found in Table 4.

Table 4: I/M Program Benefits Modeling Results -
Based on 2018 Statewide Onroad Emission Data

Model Scenario	Emission Reductions, VOC + NO_x (tons/day)	Emission Reductions Carbon Monoxide (tons/day)
A. New Jersey Existing I/M Program Without the NJLEV Program	154.0	867.2
B. New Jersey Proposed I/M Program Without the NJLEV Program	156.0	878.6
C. New Jersey Proposed I/M Program with NJLEV Program	153.4	829.1
D. NJLEV Benefits for 2009 Model Year That Were Claimed in a Previous Ozone Attainment Demonstration SIP	0.3	5.1
E. SIP Emission Benefits Shortfall (From I/M Program Changes) (B-A)	2.0	11.4
F. NJLEV Benefits (B-C)	2.6	49.5
G. NJLEV Benefits Not Previously Claimed (F-D)	2.3	44.4

EPA's Evaluation

Based on the above discussion and the state's 110(l) demonstration, EPA believes that the changes to the New Jersey's I/M program will not interfere with attainment or maintenance of any of the NAAQS in either the Northern or Southern New Jersey nonattainment areas and would not interfere with any other applicable requirement of the CAA, and thus, are approvable under CAA section 110(l).

VI. What are the EPA's Conclusions?

The EPA's review of the materials submitted indicates that New Jersey has revised its I/M program in accordance with the requirements of the CAA, 40 CFR Part 51 and all of the EPA's technical requirements for an approvable Enhanced I/M program. The EPA is proposing to approve the rules and rule amendments to the New Jersey Department of Environmental Protection's rules at N.J.A.C. 7:27-14, 7:27-15, 7:27A-3, 7:27B-4, 7:27B-5 and the Motor Vehicle Commission rules at N.J.A.C. 13:20-7.1 through 7.6, 13:20-26.12 and 26.16, 13:20-32.1 through 32.49, 13:20-33.1 through 33.50, Appendix C, N.J.A.C 13:20-43.1, 43.2 and 43.2A, 43.4 through 43.8, 43.14, 43.16, and N.J.A.C 13:20-44.2, 44.3 and 44.10. The CAA gives states the discretion in program planning to implement programs of the state's choosing as long as necessary emission reductions are met.

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days after date of publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for

judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 et seq.

Dated: September 6, 2017. Catherine R. McCabe,
Acting Regional Administrator,
Region 2.

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